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Supreme Court, U.S.
FILED
09-296 JUL 6 - 2009
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Elizabeth A. Kalil,

Petitioner.

On Petition for Writ of Mandamus and Prohibition to the U.S. Court of Appeals for the Second Circuit

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PETITION FOR WRIT OF MANDAMUS AND PROHIBITION TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT, HON. DENNIS JACOBS, CHIEF JUDGE, HON. JOHN M. WALKER, JR., AND HON. GUIDO CALABRESI, CIRCUIT JUDGES

APPENDIX

Elizabeth A. Kalil
Petitioner, *pro se*
8 Old Willow Rd.
New Hartford, NY 13413
(315)735-8866

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPEALLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPAINED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICALLY ACCESIBLE WITHOUT PAYMENT OF A FEE (SUCH AS THE DATEBASE AVAILABLE AT HTTP://WWW.CA2.US COURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Daniel Patrick
Moynihan

United States Courthouse, 500 Pearl Street, in the City of New York, on the 3rd day of December, two thousand eight.

PRESENT: HON. DENNIS JACOBS,
Chief Judge,
HON. JOHN M. WALKER, JR.,
HON. GUIDO CALABRESI,
Circuit Judges.

----------x

Elizabeth A. Kalil,
Plaintiff-Appellant,

-v- 07-3490-bk(L)
07-3522-bk(Con)

Utica City School District,
Defendant-Appellee.

----------x

FOR PLAINTIFF-APPELLANT: Elizabeth A. Kalil, pro se, New Hartford, New York.

FOR DEFENDANT-APPELLEE: Donald R. Gerace, Utica, New York.

Appeal from a judgment of the Northern District of New York (Hurd, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDED AND DECREED that the judgment of the district court be AFFIRMED.

Elizabeth a. Kalil appeals form an order entered May 22, 2007 by the District Court for the Northern District of New York (Hurd, J.) affirming two orders entered by the Bankruptcy Court for the Northern District of New York (Littlefield, J.) denying Kalil's motions for reconsideration of the bankruptcy court's orders dismissing Utica City School District's ("District")adversary proceeding and Kalil's motion to seal the record. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal.

"An appeal from a district court's review of a bankruptcy court ruling is subject to plenary review." In re Halstead Energy Corp., 367 F. 3d 110, (2d Cir. 2004). Findings of fact are accepted unless clearly erroneous, but conclusions of law are reviewed de novo. Id. at 114.

The United States Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer ("OCAHO") (Barton, A.L.J.) awarded $52,958.40 in attorneys fees to the Utica City School District. Kalil is not now entitled to challenge that award now, because this Court has already affirmed the

ALJ's award of attorney's fees. Kalil v. U.S. Dep't of Justice, 114 Fed. Appx. 158 (2d. Cir. 2005) (summary order), cert. denied, 549 U.S. 882 (2006).

Kalil also contends that the bankruptcy court erred in dismissing the adversary proceeding initiated by the District. The adversary proceeding was brought to prevent Kalil from discharging the fee award in Chapter 7

proceedings; the bankruptcy court dismissed the proceeding after dismissing Kalil's underlying Chapter 7 petition. The bankruptcy court concluded correctly that the adversary proceeding was rendered moot by dismissal of the underlying Chapter 7 petition.

Kalil's final argument is that the bankruptcy court erred in denying her request to seal the adversary proceeding records. Bankruptcy court filings are "public records... open to examination" absent a need to protect trade secrets or propriety information or to "protect a person with respect to scandalous or defamatory matter." 11 U.S.C. 107. The allegedly defamatory matter in this case consists of written orders by the ALJ in the OCAHO proceedings. Those orders are not defamatory because statements made in judicial proceedings are absolutely privileged under New York law. Kelly v. Albarino, 485 F. 3d.

664,665-66 (2d. Cir. 2007) (per curiam). Accordingly, the bankruptcy court did not err in denying Kalil's motion to seal the record.

We have considered Kalil's remaining arguments and find them to be without merit. For the foregoing reasons, the judgment of the district court is AFFIRMED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, CLERK

By: _____

UNITED STATE COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 3rd day of February, two thousand and nine,

Before Hon. Dennis Jacobs,
Chief Judge,
Hon John M. Walker, Jr.,
Hon. Guido Calabresi,
Circuit Judges.

Elizabeth A. Kalil
Plaintiff -Appellant,
v.
Utica City School District
Defendant-Appellee.

ORDER
Docket Number 07-3490-bk(L)
07-3522(Con)

Elizabeth A. Kalil having filed a petition for panel rehearing and the panel that determined the appeal having considered the request
IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe, Clerk
By:_____
Frank Perez, Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Court House
40 Foley Square, New York, NY 10007

Dennis Jacobs
Chief Judge

Catherine O'Hagan Wolfe
Clerk of the Court

Date: 2/9/09 DC Docket Number 06-cv-1266
Docket Number:07-3490-bk DC: NDNY (UTICA)
Short Title: In Re: Elizabeth A. Kalil v DC: Judge Honorable David Hurd

MOTION INFORMATION FORM

Movant: Elizabeth A. Kalil, Appellant

	Yes	No
Consent sought from adversary(ies)?	[]	[]
Consent obtained from adversary(ies)?	[]	[]
Is oral argument desired?	[]	[]

ORDER

Before Hon. Dennis Jacobs, *Chief Judge*, Hon. John M. Walker, Jr. Hon Guido Calabresi, *Circuit Judges*

IT IS HEREBY ORDERED that the motion by *pro se* Appellant to stay the mandate and for permission to file a Petition for Rehearing *en banc* is DENIED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
By_____

Mar 3 2009
Date

Judy Pisnanont, Motions Staff Attorney

Motions Staff Attorney

UNITED STATED COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES
COURTHOUSE
40 FOLEY SQUARE
NEW YORK, NY 10007
(212)857-8500

DENNIS JACOBS
CHIEF JUDGE

THOMAS W. ASREEN
ACTING CLERK OF THE COURT

November 9, 2009

Elizabeth A. Kalil
8 Old Willow Road
New Hartford, NY 13413

Re: Kalil v. Dept. of Justice et al.
#04-0623-ag

Dear Mrs. Kalil:

Pursuant to your letter dated October 20, 2006 your request to conduct a search of our Court records (Acco file) has been completed. There is no "money judgment" entered by this Court against you.

Please see the enclosed certified docket sheet and summary order dated August 4, 2005 disposing your appeal.

Sincerely,

Richard Alcantara
Administrative Manager

Enc.

BEST AVAILABLE COPY